

42 U.S.C. §1983 – FORCE

Kisela v. Hughes, --- U.S. --- (2018)

Decided April 2, 2018

FACTS: In May, 2010, a neighbor called 911 to report that a “woman was hacking a tree with a kitchen knife.” Officers Kisela and Garcia were dispatched to the scene. The caller flagged them down, gave them a description of the woman and described erratic behavior. Officer Kunz arrived on her bicycle.

Officer Garcia spotted a woman, Chadwick, standing next to a car in a driveway, but a fence with a locked gate separated the officer from the woman. Another woman (Hughes) emerged from the house “carrying a large knife at her side.” Hughes met the description of the erratic subject and walked toward Chadwick, stopping no more than six feet away from her. All three officers drew their pistols and Hughes was ordered to drop the knife. Chadwick said “take it easy” to both Hughes and the three officers. “Hughes appeared calm but she did not acknowledge the officers’ presence or drop the knife. Kisela dropped to the ground to get a better line of sight and shot Hughes through the fence. The officers went over the fence and secured the injured Hughes. She was transported and treated; she survived. Less than a minute elapsed between the time the officers saw Chadwick and Kisela fired.

Later, all three officers indicated that they “subjectively believed” Hughes was a threat to Chadwick. They learned later that the two were roommates and that Chadwick was upset over a small debt. Shortly before the shooting, Hughes had been threatening Chadwick’s dog with the knife. Chadwick was going to her car to get the money for the debt when the police arrived. Chadwick swore in an affidavit that she did not feel endangered.

Hughes filed suit against Kisela under 42 U.S.C. §1983, claiming excessive force. The District Court ruled in favor of Kisela but the Ninth Circuit Court of Appeals reversed that, ruling that the evidence “was sufficient to demonstrate that Kisela violated the Fourth Amendment” and that it was clearly established that the shooting was improper.

Kisela requested review and the U.S. Supreme Court granted certiorari.

ISSUE: Is an officer entitled to qualified immunity if the law is not clearly established?

HOLDING: Yes

DISCUSSION: The Court looked back to the seminal case of Tennessee v. Garner,¹ in which it was held “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to

¹ 471 U.S. 1 (1985)

prevent escape by using deadly force.” In Graham v. Connor,² the Court noted that the evaluation of the case “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” And, the Court continued, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”

In this case, the Court agreed, it did not need to “decide whether Kisela violated the Fourth Amendment when he used deadly force against Hughes. For even assuming a Fourth Amendment violation occurred—a proposition that is not at all evident—on these facts Kisela was at least entitled to qualified immunity.” For the law to be clearly established, “existing precedent must have placed the statutory or constitutional question beyond debate.”³

The Court noted that “Kisela had mere seconds to assess the potential danger to Chadwick.” It was clearly not incorrect to use deadly force to protect a third party (Chadwick) in the circumstances before the officers. The Court discounted the case law relied upon by the Ninth Circuit, reversed its decision and ruled that Kisela was entitled to qualified immunity.

FULL TEXT OF DECISION: https://www.supremecourt.gov/opinions/17pdf/17-467_bqm1.pdf

² 490 U.S. 386 (1989).

³ White v. Pauly, 580 U.S. --- (2017).